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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,135	09/29/2003	Michael J. Brookman	30810/39676A	5725
4743 7590 11/05/2008 MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606				
EXAMINER DIXON, ANNETTE FREDRICKA				
ART UNIT		PAPER NUMBER		
3771				
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11/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/675,135

Applicant(s)

BROOKMAN, MICHAEL J.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4 and 6-28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

1. This Office Action is in response to the Pre-Appeal Brief Conference Decision to reopen prosecution, resolved on October 28, 2008. Examiner acknowledges claims 1-4, and 6-28 are pending in this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, and 6-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory (3,739,774) in view of Gray (4,449,524) and Smith et al. (6,344,071).

As to Claims 1 and 9, Gregory discloses a breathing apparatus comprising: a pressurized oxygen line (16) for providing pressurized air to the user of the apparatus during a clean air mode; a filter system (4) adapted to enable ambient air to deliver filtered air to said user of said apparatus during a filtered air mode, a means for moving said ambient air into said filter system (4) (via blower 6), a valve assembly (21) comprising a first valve (the operation spring 40 to move from a compressed state to an elongated state by which the piston moves downwardly away from the pressurized gas inlet line 29) associated with the tank and a second valve (the movement of the piston 38 downwardly thus engaging the plate 30 against the filtered air inlet 31) associated with the filter system (4) to control the flow of cleaned air from the valve assembly (21)

adapted to control the flow of cleaned air from said filtered system (4) in said filtered mode and pressurized air from in said clean air mode, such that the pressurized air supplied opens the first valve and closes said second valve to actuate said valve assembly (21) from a filtered mode to the clean air mode while continuously providing a supply of breathable air to the user (Column 4, Lines 22-67). Regarding the first valve, though Gregory does not expressly disclose the compression of the spring to cause the piston 38 to cover the inlet line 29. The force of the filtered air being supplied thru the valve assembly would encourage the compression of the spring (40). Intrinsically, the compression of the spring would move the piston in an upward position capable of covering the inlet line. Furthermore, should Applicant respectfully disagree, Examiner provides the reasoning for a one way valve element required to enable the movement of pressurized oxygen from inside the cylinder (37) to the mask (13) in order to prevent contamination of the pressurized oxygen line by the filtered air. Yet Gregory does not expressly disclose a tank for supplying the pressurized gas, a regulator associated with the tank, a first switch to manually operate the valve of the regulator, nor the filter medium for the filtration device. Regarding the tank, regulator and first switch, Gray teaches a tank (10), a regulator (17) and a switch (15) operatively coupled to the tank and selectively enabling the switching between a clean air mode and a filtered air mode. (Figure 1). Gray teaches the aforementioned elements enable the delivery of pressurized gas to a mask of a user for providing a controlled self contained breathing environment. Regarding the filter medium, Smith teaches a broad spectrum filter system utilizing a filtration mesh media and a blower for the purpose of filtering particles

and gases from the ambient environment. (Abstract and Column 5, Lines 5-61).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Gregory to include the tank, regulator and switch as taught by Grey to provide a controlled pressurized breathing device and the filter medium of Smith to enable the decontamination of the ambient air from harmful gases and particles.

As to Claims 2 and 14, Gregory discloses a plurality of filtering elements. (Figure 1).

As to Claims 3 and 10, Gregory discloses the face mask (13) is adapted to tightly fit the user. (Column 1, Lines 30-40). (Figure 2).

As to Claims 4, 13, 18, and 21, Gregory discloses a first conduit (16) between the pressurized oxygen source (tank) and the face mask (13) and a second conduit (10) between the filter systems (4) an the face mask (13), and the valve assembly (21). (Figure 2).

As to Claims 6 and 15, Gregory discloses a one way exhaust valve (24) associated with the face mask (13). (Figure 2).

As to Claims 7, and 16, Gregory discloses the second switch (42) is user actuatable. (Column 4, Lines 38-67). (Figure 2).

As to Claim 8, 19, 22, 27 and 28, Gregory discloses the second switch (42) is coupled to the valve assembly (21). (Figure 2). Regarding the association of the second switch to the blower, it should be noted that upon actuation of the second switch (42) gas may be transmitted to the user via the filtered air supply.

As to Claims 11 and 12, Smith teaches a broad spectrum filter system utilizing a filtration mesh media and a blower for the purpose of filtering particles and gases from the ambient environment. (Abstract and Column 5, Lines 5-61).

As to Claims 17, 20, 25, and 26, Gregory discloses the operation of the valve assembly. Please see the rejection of claim 1 and Column 4, Lines 22-67.

As to Claims 23 and 24, Gray teaches a tank (10), a regulator (17) and a switch (15) operatively coupled to the tank and selectively enabling the switching between a clean air mode and a filtered air mode. (Figure 1). Gray teaches the aforementioned elements enable the delivery of pressurized gas to a mask of a user for providing a controlled self contained breathing environment.

Response to Amendment

4. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

5. Applicant's arguments with respect to claims 1-4, and 6-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van Oosten et al. (5,078,130) additional invention of a breathing gas apparatus having plural inlets. Thompson et al (4,961,763) additional invention of a filtration media for purifying the air and contaminates. Lundberg (6,655,383), Giorgini (4,433,685), and Spruiell (7,086,397) additional inventions of pressurized gas lines having a plurality of valves and regulators for controlling the movement of the pressurized gas from the source to the user.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Annette F Dixon/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771